

## **Remarks**

The various parts of the Office Action (and other matters, if any) are discussed below under appropriate headings.

### ***Telephone Interview***

The undersigned would like to thank the Examiner for his courtesy during the telephone interview conducted on February 17, 2010. During the Interview, amendments to the independent claims were discussed and it was agreed that the amendments distinguished the claimed invention over *Krause*. The amendments to claims 1 and 24 as set forth herein are consistent with the amendments discussed on February 17, 2010. Support for the amendments can be found, for example, on page 8, lines 9-10 of the application as filed.

### ***Petition***

A Petition to Accept an Unintentionally Delayed Claim under 35 USC §1.120 is being submitted with this response. The Petition requests that the present application be given the benefit of Application No. 10/133,867 (now U.S. 7,194,295).

### ***Claim Rejections - 35 USC § 102***

Claims 1, 3-19 and 21-24 stand rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,711,432 (*Krause*) and/or by U.S. Patent No. 7,194,295 (*Vilsmeier*). Withdrawal of the rejection is respectfully requested for at least the following reasons.

Claim 1 has been amended to clarify that a position of a patient or a part of the patient's body is detected with the patient being in position for treatment, and without removing the patient from the position for treatment, patient-specific characteristic, two dimensional detection data are acquired.

### ***Krause***

*Krause* discloses three separate phases for treating a patient. In a first phase, a three-dimensional computerized model of the patient's bone is created. In a second phase, the model is provided to a planning computer, and a pre-surgical plan is developed for treating the patient. In a third phase, computer-aided surgery is

performed based on the pre-surgical plan.<sup>1</sup> Regarding the first phase (i.e., creation of the bone model), *Krause* states that conventional techniques for generating such three-dimensional models can be expensive and can require an extended amount of time to perform an MRI/CAT procedure.<sup>2</sup> To address this problem, *Krause* proposes to generate a three-dimensional bone model using X-ray images and template bone models (as opposed to using MRI/CAT methodologies).<sup>3</sup> Once the template bone model according to *Krause* is created, it is provided to planner software to develop a surgical plan.<sup>4</sup> Then once the bone model and plan have been created, the patient is ready to undergo the actual surgical procedure.<sup>5</sup>

It is not until the third phase that the patient is placed in a position for treatment (which is subsequent to the creation of the bone model). Thus, it is not until this point in time that a position of a patient is detected. However, *Krause* has already acquired the X-ray images prior to placement of the patient in a position for treatment (the x-ray data is acquired to construct the three-dimensional model). Therefore, *Krause* cannot teach detecting a position of the patient or part of the patient's body with the patient in position for treatment, and without removing the patient from the position for treatment, acquiring patient characteristic, two dimensional detection data.

Accordingly, withdrawal of the rejection of claim 1 based on *Krause* is respectfully requested.

### ***Vilsmeier***

As noted above, a Petition has been filed requesting the present application be given the benefit of U.S. 10/133,867 (i.e., *Vilsmeier*). Assuming the Petition is granted, any issue with respect to *Vilsmeier* is moot.

Accordingly, withdrawal of the rejections based on *Vilsmeier* is respectfully requested.

### ***Unaddressed issues***

The absence in this reply of any comments on the other contentions set forth in the Office Action should not be construed to be an acquiescence therein. Rather, no

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<sup>1</sup> See column 4, line 14-column 5, line 15

<sup>2</sup> See column 4, lines 20-32

<sup>3</sup> See column 5, line 58-column 6, line 9

<sup>4</sup> See column 8, lines 36-61

<sup>5</sup> Column 11, lines 36-37

comment is needed since the rejections should be withdrawn for at least the foregoing reasons.

***Conclusion***

In view of the foregoing, request is made for timely issuance of a notice of allowance.

Respectfully submitted,  
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